IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA No. 4248 of 2002
Date of decision : 7.11.2006

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Parties Name

Gulzar Singh

..... appellant

vs.

Sarup Singh and others

.....Respondents

Coram: Hon'ble Mr. Justice S.N. Aggarwal

Present: Sh. S.S. Dinarpur, Advocate
for the appellant.

Sh. Arvind Singh, Advocate
for respondentNo.1.

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S.N. Aggarwal, J.

Gulzar Singh-appellant purchased the land measuring 48 kanal 9 marlas from its owner Livender Singh s/o Dharampal Singh vide sale deed dated 9.11.1995 for a consideration of Rs.4,96,000/-. Mutation No. 376 dated 11.12.1995 was also sanctioned on the basis of this sale deed. After purchasing the same, said Gulzar Singh found that some of the Khasra Girdawari entries in respect of some of the suit property was in favour of Sarup Singh-respondent No.1. Hence, he filed an application for correction of Khasra Girdawari which was still pending. On the basis of that Khasra Girdawari entry Sarup Singh-respondent No.1 tried to dispossess Gulzar Singh-appellant, on which the appellant filed the suit for permanent injunction. Sarup

Singh-respondent No.1 contested the suit and pleaded that he was the tenant over a part of the suit property and it was cultivated by him. Hence, he prayed for dismissal of the civil suit for permanent injunction filed by the appellant.

Issues were framed. The parties led the evidence.

The learned trial Court decreed the suit of the appellant with costs vide judgment and decree dated 11.12.2001 and restrained Sarup Singh-respondent No.1 from interfering in the peaceful possession of the appellant over the suit property.

Sarup Singh-respondent No.1 filed an appeal against the said judgment. The learned Lower Appellate Court reversed the findings of fact recorded by the learned trial Court and held that Sarup Singh-respondent No.1 was in possession of over 32 Kanals 17 Marlas of suit land. Accordingly, the findings recorded by the learned trial Court were reversed qua that land. The appeal was accepted and the suit of Gulzar Singh-appellant to that extent was dismissed by the learned Lower Appellate Court vide judgment and decree dated 27.9.2002.

Hence, the present appeal.

During the pendency of this appeal, the appellant filed CMs No. 10535-10536 C of 2005 under Section 151 CPC for placing on record, (i) a copy of the order passed by the Assistant Collector 2nd Grade, Naraingarh, Ambala dated 18.11.2002; (ii) a copy of the order dated 5.8.2003 passed by the Court of Civil Judge (Junior Division) Ambala; and (iii) a copy of the order dated 26.8.2003 passed by the Court of Civil Judge (Senior Division), Ambala.

The submission of the learned counsel for the appellant was two fold. Firstly, it was submitted that the Khasra Girdawaris which were entered in favour of Sarup Singh-respondent No.1 and on the basis of which, the learned Lower Appellate Court has accepted the appeal filed by Sarup Singh-respondent No.1, have been corrected by the Assistant Collector 2nd Grade, Naraingarh. Therefore, according to the latest entries in Khasra Girdawaris also the appellant is in possession of the suit land. The Assistant Collector 2nd Grade in his order dated 18.11.2002 observed as under:-

> "I have gone through all the facts available on the file and I have also carried out the spot inspection of the disputed land, the report of which has been taken on the file separately. From the spot inspection also, the applicant was found to be in cultivating possession of the disputed land. Keeping in view all the aforesaid facts, the application of the applicant is accepted and I order the correction of khasra girdawari of the disputed land comprised in khasra no. 3//11/1, 20/2, 4//6, 4//14, 15,16, Kittas 6, measuring 32 kanals 17 marlas situated within the revenue estate of village Tepla, Tehsil Naraingarh, Distt. Ambala in favour of Gulzar Singh son of Shri Kartar Singh as Khudkast w.e.f. khariff 1999 onwards."

It was submitted by the learned counsel for the appellant that no appeal was filed against this order and this order passed by the Assistant Collector dated 18.11.2002 has become final in which it was specifically observed that Gulzar Singh-applicant was in

possession of the suit property and Khasra Girdawaris entered in favour of Sarup Singh-respondent No.1 were corrected. Hence, it was prayed that the impugned judgment of the learned Lower Appellate Court be set aside and the appeal be accepted.

The next submission of the learned counsel for the appellant was that the parties have compromised all the Court cases pending between the parties. As per the terms of the compromise, the appellant was to make the payment of Rs. 2 lacs to the respondent through an Arbitrator. He has already paid Rs. 1 lac and the appellant has brought the bank draft for the remaining amount of Rs. 1 lac. On the other hand, the respondent was to withdraw the two civil suits instituted by him against the appellant, one for pre-emption and the other for permanent injunction. The respondent was also to make statement in this case for acceptance of the appeal in favour of the appellant.

In support of this submission the learned counsel for the appellant placed on the file Annexure P-2 which is a copy of the order dated 5.8.2003 passed by the Court of Civil Judge (Junior Division), Ambala in civil suit No. 46/96 filed by Sarup Singh-respondent No.1 on 5.11.1996 against Gulzar Singh-appellant and Livender Singh-vendor. This suit was filed for pre-emption for the entire land purchased by Gulzar Singh-appellant vide sale deed dated 9.11.1995. The parties had then compromised the entire litigation which is clear from the following order:-

> "Today the case was fixed for rebuttal evidence. However plaintiff Sarup Singh made a statement to the effect that

compromise has been duly effected on the file of the Court among the parties, whereby defendant will make the payment of Rs.2 lac through arbitrator. Therefore, he is not interested to proceed further with the present case. Keeping in view statement of the plaintiff, present suit stands dismissed as withdrawn. File after due compliance be consigned to the record room.

Announced 5.8.2003 Sd/-
Civil Judge (Jr. Divn.)
Ambala ”

Learned counsel for the appellant also placed on the file Annexure P-3 which is a copy of the order dated 26.8.2003 passed by the Court of Civil Judge (Senior Division) Ambala in civil suit filed by Sarup Singh against Gulzar Singh-appellant for permanent injunction. That suit also was got dismissed as withdrawn by Sarup Singh through his attorney on 26.8.2003. A copy of the order is reproduced as under :-

“Sh. Jaswinder Singh power of attorney has appeared in person and he has stated that he is special power of attorney of plaintiff who is his father. He further stated that matter has been compromised and he does not want to proceed with the present suit and suit be dismissed as withdrawn. Statement recorded. In view of the statement, suit is dismissed as withdrawn. File be consigned to the record room after due compliance.

Sd/-
Civil Judge (Senior Division)
Ambala 26.8.2003”

It was submitted that the respondent is intentionally absenting in this case.

Learned counsel for the respondent submits that he has not been able to contact his party in spite of efforts made by him and therefore, he is unable to say anything about the compromise.

The compromise between the parties is clearly recorded by the Civil Court. It appears that since the Assistant Collector 2nd Grade, Naraingarh had ordered correction in the Khasra Girdawari vide order dated 18.11.2002 and Gulzar Singh-appellant was held to be owner in cultivating possession of the suit land Sarup Singh compromised the matter with the appellant.

Therefore, even if Sarup Singh has failed to make statement of compromise, in this case, the appeal is decided as compromised which is in the interest of the respondent also.

The appellant is directed to deposit the bank draft of Rs.1 lac within four weeks with the learned trial Court. This amount shall be payable to Sarup Singh-respondent.

Accordingly, the judgment of the learned Lower Appellate Court is set aside. Gulzar Singh-appellant is held to be owner in possession of the suit property.

The appeal is accordingly, accepted in the above terms.

(S.N.Aggarwal)
Judge

7.11.2006.
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